IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

MFA.No. 800 of 2000()

OPMV.331/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
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APPELLANT:

UNITED INDIA INSURANCE COMPANY LTD., BRANCH OFFICE, KALPETTA P.O. VYTHIRI TALUK, WAYANAD DISTRICT, REPRESENTED BY ITS ASSISTANT MANAGER THRID PARTY CLAIM CELL, COCHI-11.

BY ADV. SRI.SIBY MATHEW
SRI.WILSON URMESE

RESPONDENTS:
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1. K.CHELLAMUTHU, SON OF KANDYSWAMI, MYLADIPPARAYIL HOUSE, T.H.NAGAR, KALPETTA NORTH.

2. K.JAYARAM, SON OF PARU, KAKKAVAYAL, PURAKKODY AMSOM, VYTHIRI TLAUK, WAYANAD DIST.

3. VINODHAN, SON OF BALAN, ALUPADIKKAL HOUSE, THRIKAIPATTA AMSOM, NELLIMALAM, YTHIRI TALUK, WAYANAD DISTRICT.

BY ADV. SRI.J.DEVADANAM
SRI.VINOD VALLIKAPPAN
SRI.VINOD J.DEV
SRI.PRAMOD J.DEV

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 800 of 2000

Dated this the 17th day of September, 2007.

JUDGMENT

Koshy, J:

The first respondent in this case was travelling in a bus bearing registration No.KL-12/3465 suffered serious injuries in an accident. The iron rod tied in the bus pierced on the left eye when it fell down due to rash and negligent driving of the bus driver. As a result of this, his eye sight was lost. Ext.A1 is the FIR which shows that the accident occurred as alleged. Ext.A2 is the disability certificate which reads as follows:

> "Mr.Chellamuthu was under treatment following an alleged RTA on 29.5.97 for injury to left eye, caused by penetration of iron rod into the eye ball. That eye ball was removed and prosthesis given. Now he complains of pain and blurring of vision (R) eye. He requires an operation at the earliest to prevent damage to his right eye".

2. Tribunal has awarded an amount of Rs.2,88,500/- with 12% interest from the date of application till the date of realization and also awarded 13% additional interest if the compensation is not paid within 30 days of the date of award. We are of the opinion that the award of the Tribunal is arbitrary as no reasons are stated in computing the compensation amount or penal interest. Hence, entire compensation has to be re-worked.

2. We have referred the first respondent to the medical board. The medial board certified that there is 30% disability. Then the question is what is the compensation payable. According to claimant, he was a quarry worker. No evidence was adduced to show that he was a quarry worker earing Rs.6000/- per month. There is no reason for assessing Rs.6000/- as monthly income. No oral evidence or documentary evidence was adduced. At the maximum, he may be a general worker. We fix his monthly income at Rs.3000/- taking wages of manual worker in Kerala in 1997. He was aged 40 years at the time of accident. Taking guidelines from the 2nd schedule, we take 15 as the multiplier. If that be so, compensation payable for 30% disability will be Rs.1,62,000 (3000 x12x30/100x15). He must have suffered extreme pain due to piercing of iron rod on his left eye. For pain and suffering we grant Rs.20,000/- instead of Rs.50,000/- awarded by the Tribunal. No medical bills were produced. Ext.A2 certificate was issued by a private hospital. It requires that he has to undergo a surgery. We grant Rs.25000/- towards medical and treatment expenses. He was under treatment for 3 months. For treatment period, he is entitled Rs.9000/- (3x3000) as loss of actual earning capacity. For loss of amenities and enjoyment in life, another Rs.10,000/- is granted. Thus, the total compensation payable will be Rs. 2,26,000/-. (The Tribunal assessed total compensation of Rs.2,88,500/-). The appellant Insurance Company is directed to deposit total compensation o f Rs.2,26,000/- with

9% interest from the date of application till deposit after deducting the amount already deposited.

Appeal is allowed partly.

SD/-

J.B.KOSHY,
JUDGE.

SD/-
K. HEMA,
JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 800 of 2000

Dated this the 17th day of September, 2007.

JUDGMENT